

§ 12.35–3

§ 12.35–3 Definition.

Passenger ship in this subpart means a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

§ 12.35–5 General requirements.

If you are an unlicensed person, then, before you may serve on a passenger ship and perform duties that involve safety or care for passengers, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A-V/3 of the STCW Code (incorporated by reference in §12.01-3); and

(b) Hold documentary evidence to show that you do meet these requirements through approved or accepted training.

Subpart 12.40—Non-resident Alien Unlicensed Members of the Steward's Department on U.S.-Flag Large Passenger Vessels

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§ 12.40–1 Purpose of rules.

The rules in this subpart implement 46 U.S.C. 8103(k) by establishing requirements for the issuance of merchant mariner's documents, valid only for service in the steward's department of U.S.-flag large passenger vessels, to non-resident aliens.

§ 12.40–3 Definitions.

As used in this subpart:

Large passenger vessel means a vessel of more than 70,000 gross tons, as measured under 46 U.S.C. 14302 and documented under the laws of the United States, with capacity for at least 2,000 passengers and a coastwise endorsement under 46 U.S.C. chapter 121.

Non-resident alien means an individual who is not a citizen or alien lawfully admitted to the United States for permanent residence, but who is employable in the United States under the Immigration and Nationality Act (8

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U.S.C. 1101 *et seq.*), including an alien crewman described in section 101(a)(15)(D)(i) of that Act who meets the requirements of 46 U.S.C. 8103(k)(3)(A).

Steward's department means the department that includes entertainment personnel and all service personnel, including wait staff, housekeeping staff, and galley workers, as defined in the vessel security plan approved by the Secretary under 46 U.S.C. 70103(c). These personnel may also be referred to as members of the hotel department on a large passenger vessel.

§ 12.40–5 General application requirements.

(a) Unless otherwise expressly specified in this subpart, non-resident alien applicants for Coast Guard-issued merchant mariner's documents are subject to all applicable requirements contained in this subchapter.

(b) No application from a non-resident alien for a merchant mariner's document issued pursuant to this subpart will be accepted unless the applicant's employer satisfies all of the requirements of § 12.40–7.

§ 12.40–7 Employer requirements.

(a) The employer must submit the following to the Coast Guard, as a part of the applicant's merchant mariner's document application, on behalf of the applicant:

(1) A signed report that contains all material disciplinary actions related to the applicant, such as, but not limited to, violence or assault, theft, drug and alcohol policy violations, and sexual harassment, along with an explanation of the criteria used by the employer to determine the materiality of those actions;

(2) A signed report regarding an employer-conducted background check. The report must contain:

(i) A statement that the applicant has successfully undergone an employer-conducted background check;

(ii) A description of the employer-conducted background check, including all databases and records searched. The background check must, at a minimum, show that the employer has reviewed all information reasonably and

legally available to the owner or managing operator, including the review of available court and police records in the applicant's country of citizenship, and any other country in which the applicant has received employment referrals, or resided, for the past 20 years prior to the date of application; and,

(iii) All information derived from the employer-conducted background check.

(3) The employer-conducted background check must be conducted to the satisfaction of the Coast Guard for a merchant mariner's document to be issued to the applicant.

(b) If a merchant mariner's document is issued to the applicant, the report and information required in paragraph (a)(2) of this section must be securely kept by the employer on the U.S.-flag large passenger vessel, or U.S.-flag large passenger vessels, on which the applicant is employed. The report and information must remain on the last U.S.-flag large passenger vessel on which the applicant was employed until such time as the merchant mariner's document is returned to the Coast Guard in accordance with paragraph (d) of this section.

(c) If a merchant mariner's document or a transportation worker identification credential (TWIC) is issued to the applicant, each merchant mariner's document and TWIC must be securely kept by the employer on the U.S.-flag large passenger vessel on which the applicant is employed. The employer must maintain a detailed record of the seaman's total service on all authorized U.S.-flag large passenger vessels, and must make that information available to the Coast Guard upon request, to demonstrate that the limitations of § 12.40-13(c) have not been exceeded.

(d) In the event that the seaman's merchant mariner's document and/or TWIC expires, the seaman's visa status terminates, the seaman serves onboard the U.S.-flag large passenger vessel(s) for 36 months in the aggregate as a nonimmigrant crewman, the employer terminates employment of the seaman or if the seaman otherwise ceases working with the employer, the employer must return the merchant mariner's document to the Coast Guard and/or the TWIC to the Transportation Se-

curity Administration within 10 days of the event.

(e) In addition to the initial material disciplinary actions report and the initial employer-conducted background check specified in paragraph (a) of this section, the employer must:

(1) Submit an annual material disciplinary actions report to update whether there have been any material disciplinary actions related to the applicant since the last material disciplinary actions report was submitted to the Coast Guard.

(i) The annual material disciplinary actions report must be submitted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(1) of this section, except that the period of time examined for the material disciplinary actions report need only extend back to the date of the last material disciplinary actions report; and

(ii) The annual material disciplinary actions report must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner's document.

(2) Conduct a background check each year that the merchant mariner's document is valid to search for any changes that might have occurred since the last employer-conducted background check was performed:

(i) The annual background check must be conducted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(2) of this section, except that the period of time examined during the annual background check need only extend back to the date of the last background check; and

(ii) All information derived from the annual background check must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner's document.

(f) The employer is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f) for any violation of this section.

§ 12.40-9 Basis for denial.

In addition to the requirements for a merchant mariner's document established elsewhere in this subchapter, and the basis for denial established in